

APS-335

September 14, 2006

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 05-5386

UNITED STATES OF AMERICA

v.

FRED JOHNSON,
Appellant

(W.D. Pa. Crim. No. 00-cr-00177)

(CRIMINAL TREATED AS CIVIL)

Present: SLOVITER, McKEE and FISHER, CIRCUIT JUDGES

Submitted is Appellant's notice of appeal, which may be construed as a request for a certificate of appealability under 28 U.S.C. § 2253(c)(1) in the above-captioned case.

Respectfully,

Clerk

MMW/JLR/je/pdb

ORDER

Appellant's request for a certificate of appealability is denied. Appellant has not arguably shown that the District Court erred in deciding Appellant's letters could not be construed as a motion to vacate sentence pursuant to 28 U.S.C. § 2255 where those letters did not state any claims for relief, and Appellant would have been unable to amend his filing after the statute of limitations expired. See United States v. Thomas, 221 F.3d 430, 437 (3d Cir. 2000). Appellant has not demonstrated that the statute of limitations should be equitably tolled.

By the Court,

/s/ D. Michael Fisher
Circuit Judge

Dated: October 13, 2006
PDB/cc: Mr. Fred Johnson
Robert L. Eberhardt, Esq.



Marcia M. Waldron